

Date of decision: 1st July, 1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made ..
5. Whether it is to be circulated to the Civil Judge?

Mr.B.P.Tanna, L.A. for the petitioner
Mr.Mihir J.Thakore, L.A. for the respondent

Coram: N.J.Pandya,J.
July 1,1996

C.A.V. JUDGMENT:

Though the petition is filed challenging the order of dismissal and also challenging the inquiry that

preceded, at the time of admission, on behalf of the petitioner, it was stated, in no uncertain terms that the petition is restricted to the question of punishment only. On the basis of this concession to examine the question of quantum of punishment, notice was issued to the respondent by my learned colleague Justice K.G.Shah on 7-10-1993. Thereafter Rule was issued by me on 23-3-1994 and notice of Rule as well as notice as to interim relief were made returnable on 6-4-1994.

2. The charge against the petitioner was that he had not deposited with the Company in time various premium amounts which he had collected. This amounted to Rs.20,088/-. In other words, it was a case of temporary misappropriation according to the respondents. The second charge was handing over of unsigned blank cover notes to his agent one G.M.Tamakuwala and lastly, the petitioner failed to account for number of cover notes as per the statement Annexure E.

3. L.A. Mr.Tanna is right when he read the impugned termination order Annexure II pages 68 & 69 that right upto page 160 and first half of page 612, by way of background, the entire case against the petitioner has been noted. Each paragraph begins with the typed legal drafting word "whereas". After the end of the paragraphs beginning with word "whereas" with regard to the punishment, it is mentioned that after carefully considering the report of the inquiry and the facts and circumstances, the competent authority has come to the conclusion that the petitioner is rightly held guilty and therefore, the authority is of the view that ends of justice would be met if the penalty of removal from service, which shall not be a disqualification for future employment, is imposed on him. This order is dated 27th July 1993. While awarding the punishment, mere reference to background material and to advert to facts and circumstance in those words only and also making reference to ends of justice would not be sufficient.

4. Learned Senior Advocate Mr.Mihir Thakore appearing for the respondent-management strenuously argued that the petitioner himself having accepted the fact pertaining to the charges which, as summarised above, indicates temporary misappropriation, the Court should not interfere with the punishment awarded by the management. I would have readily agreed with this proposition but for the fact that the order of punishment suffers from vice of non application of mind. This has been analysed and brought about in the preceding paragraphs.

5. Apart from that, the record reveals that it was Mr. Tamakuwala, who had done the mischief and to the extent to which the petitioner can be held responsible relates to late depositing the premium amount. At best, it can be said that there was error of judgment to repose undue trust on Shri Tamakuwala. It may also indicate his deficiency in supervising ability. The petitioner, therefore, falls into the category of a person, who is affected mainly by the activity of his subordinate. Recently the Honourable Supreme Court has laid down in State Bank of India and others vs. Samarendra Kishore Endow and Another reported in 1994 (2) SCC 537 that the High Court or Administrative Tribunal cannot interfere, if punishment has been imposed after holding inquiry. Yet, if the punishment imposed is harsh, the Court should remit the case back to the authority concerned. The Honourable Judges have borne out distinction between the cases where inquiry has been held and the cases where no inquiry has been held.

6. In my humble opinion, the present case falls in the category of its own which is between the said two. No doubt, inquiry is held, but while passing the order of penalty, as stated above, there is hardly any application of mind. The part played by Shri Tamakuwala and the contribution, if any, in the activity on the part of the petitioner should have been properly evaluated while deciding upon the measure of penalty. This having not been done, in my opinion, this is a fit case to remit the matter to the disciplinary authority. The disciplinary authority shall, after hearing the petitioner and keeping in mind the aforesaid observation, decide the question of imposing penalty afresh. It is felt that the penalty thus decided upon shall be falling short of the petitioner losing his job. It can take shape of stoppage of increment, demoting the petitioner to a lower post or permutation of pension or any of the penalty available under the Rules except the penalty having the effect of losing his job. Rule is made absolute accordingly.
